

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

Cr. No. 04-100ML

JOEL FRANCISCO

ORDER

This matter is presently before the Court on the defendant's motion for a new trial pursuant to Fed. R. Crim. P. 33.

A motion for a new trial is directed to the broad discretion of the trial court. E.g., United States v. Indelicato, 611 F.2d 376, 387 (1st Cir. 1979). When ruling on such a motion, the court may weigh the evidence and evaluate the credibility of witnesses. Id. "The remedy of a new trial is sparingly used, and then only where there would be a 'miscarriage of justice . . . and where the evidence preponderates heavily against the verdict'." Id. (quoting United States v. Leach, 427 F.2d 1107, 1111 (1st Cir. 1970)). "Where a new trial motion is based upon the weight of the evidence, the court may not order a new trial, 'unless it is quite clear that the jury has reached a seriously erroneous result'." United States v. Ruiz, 105 F.3d 1492, 1501 (1st Cir. 1997 (quoting United States v. Rothrock, 806 F.2d 318, 322 (1st Cir 1986))).

The Court finds that the jury's verdict on both counts of the indictment is well-supported by the evidence adduced at trial, including, in particular, the evidence referenced in the United States' memorandum in opposition to the new trial motion.

The defendant contends that certain factual assertions made by the prosecution during its closing argument were without evidentiary basis. The defendant failed to assert a contemporaneous objection to the prosecutor's comments. Moreover, the challenged assertions

were, in fact, supported by the trial testimony. Accordingly, defendant's claim of prosecutorial misconduct is contradicted by the record.

The defendant's claim of juror misconduct is predicated on pure speculation. At some point following the conclusion of the trial, apparently after having read a newspaper account about the trial, the jury's verdict, and the defendant's alleged affiliation with the Latin Kings street gang, a juror contacted the Providence Police Department. The juror learned of the defendant's alleged ties to the Latin Kings *after* the jury had published its verdict. Contrary to the defendant's claim, there is *no* evidence that any juror failed to abide by his/her oath. Accordingly, the defendant's claim of jury misconduct does not warrant the granting of a new trial.

For these reasons, the defendant's motion for a new trial is denied.

SO ORDERED.

Mary M. Lisi
United States District Judge

May , 2005